

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**4:23cr525**

**SOHAIB ABUAYYASH**

**DEFENDANT'S OBJECTION REGARDING  
DELIBERATE IGNORANCE JURY INSTRUCTION**

The defendant, SOHAIB ABUAYYASH, the Federal Public Defender, objects to the government's belated requested jury instruction on deliberate ignorance, for the reasons that follow:

**I.**

In the commentary to the government's requested instruction, Fifth Circuit Pattern Jury Instruction (Criminal) No.1.42, the Fifth Circuit advises that the deliberate ignorance instruction "should rarely be given." *See United States v. Araiza-Jacobo*, 917 F.3d 360, 366 (5<sup>th</sup> Cir. 2019); *United States v. Richard*, 922 F.3d 639, 655 (5<sup>th</sup> Cir. 2019) (quotation omitted). The Fifth Circuit adds that the instruction is "properly given if the evidence shows that "(1) the defendant was subjectively aware of a high probability of the existence of illegal conduct; and (2) the defendant purposefully contrived to avoid learning of the illegal conduct." *See*

United States v. Oti, 872 F.3d 678, 697 (5<sup>th</sup> Cir. 2017). *See also Araiza-Jacobo*, 917 F.3d at 366.

The danger of the deliberate ignorance instruction is that “once a jury learns that it can convict a defendant despite evidence of a lack of knowledge, it will be misled into thinking that it can convict based on negligent or reckless ignorance rather than intentional ignorance.” *Araiza-Jacobo*, 917 F.3d at 366 (quoting *Oti*, 872 F.3d at 697). “This would dilute the mens rea requirement to a weak ‘should have known’ standard, which eviscerates the law’s requirement that the defendant acted ‘knowingly.’” *Id. United States v. Lara-Velasquez*, 919 F.2d 946, 951 (5<sup>th</sup> Cir. 1990). “The proper role of the deliberate ignorance instruction is not as a backup or supplement in a case that hinges on a defendant’s actual knowledge.” *United States v. Kuhrt*, 788 F.3d 403, 417 (5<sup>th</sup> Cir. 2015).

## II.

The facts in this case do not clearly support a high probability of illegal conduct and a purposeful contrivance to avoid learning of the illegal conduct. Mr. Abuayyash’s possession of firearms certainly did not put him on notice that his conduct was illegal. Nor did he consciously contrive to avoid learning the truth. Instead, he relied on documents sent to him by the government, as well as the advice of people he knew. A deliberate ignorance instruction is not warranted in this case.

III.

If a deliberate ignorance instruction is given, the Fifth Circuit recommends a “balancing” instruction stating that the instruction “does not lessen the government’s burden to show, beyond a reasonable doubt, that the knowledge elements of the crimes have been satisfied.” *See* Fifth Circuit Pattern Jury Instruction, No. 1.42, commentary (quoting *United States v. Vasquez*, 677 F.3d 685, 695-96 (5<sup>th</sup> Cir. 2012) (other citation omitted)).

For the foregoing reasons, Mr. Abuayyash, respectfully requests that the Court deny the government’s requested jury instruction on deliberate ignorance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 27, 2024, a copy of the foregoing Defendant's Objection Deliberate Ignorance Jury Instruction was served by Notification of Electronic Filing and by electronic mail to the office of Assistant United States Attorney Steven Schammel and Michael Day.

/s/ Amr A. Ahmed  
AMR A. AHMED